

AMENDED IN SENATE JUNE 23, 2004
AMENDED IN ASSEMBLY JULY 3, 2003
AMENDED IN ASSEMBLY MAY 12, 2003
AMENDED IN ASSEMBLY MAY 5, 2003
AMENDED IN ASSEMBLY MAY 1, 2003
AMENDED IN ASSEMBLY APRIL 24, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 578

Introduced by Assembly Member Leno

February 18, 2003

~~An act to add Section 27362 to, to add Article 6 (commencing with Section 27390) to Chapter 6 of Division 2 of Title 3 of, and to repeal Sections 27279.4 and 27398 of, the Government Code, relating to county recorders, An act to add Article 6 (commencing with Section 27390) to Chapter 6 of Division 2 of Title 3 of the Government Code, relating to county recorders, making an appropriations therefor, and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 578, as amended, Leno. County recorders: electronic recording.

(1) Existing law generally specifies that the recorder of any county may, in lieu of a written paper, accept for recording a digitized image of a recordable instrument, subject to specified conditions.

This bill would enact the Electronic Recording Delivery System Act of ~~2003~~ 2004, to authorize a county recorder, upon approval by resolution of the board of supervisors and system certification by the Attorney General, to establish an electronic recording delivery system for the delivery and recording of *specified* digitized electronic records, and in ~~specified cases~~, digital electronic records, ~~affecting the right, title, or interest in real property~~, subject to specified conditions, including system certification, regulation, and oversight by the Attorney General. It would *require participating counties to pay for the direct cost of regulation and oversight by the Attorney General, and authorize those counties to impose fees to cover those costs. It would* authorize the Attorney General to charge a fee directly to a vendor seeking approval of software and other services as part of an electronic recording delivery system. ~~It would require an applicant seeking authorization to submit documents electronically to obtain approval of the county recorder. Fees paid to the Attorney General under these provisions would be deposited in an unspecified account, which would be created in the Special Deposit Fund and continuously appropriated to the Attorney General for these purposes.~~

This bill would authorize the Attorney General or a district attorney or city prosecutor to seek ~~a civil penalty of up to \$50,000 for each violation of the provisions of the act enacted by the bill or its implementing regulations and to seek specified civil remedies.~~

This bill would, until January 1, 2011, authorize specified counties, ~~subject to approval by their respective boards of supervisors, to participate in an electronic recording pilot project for the delivery and recording of digital electronic records, subject to specified criteria.~~

The Attorney General would be required to evaluate the electronic recording delivery systems, ~~including pilot projects~~ and report to both houses of the Legislature on or before June 30, ~~2007-2009~~.

(2) ~~Existing law authorizes the board of supervisors of any county to provide for specified fees for the filing and indexing of documents with the county recorder.~~

~~This bill would provide that a county establishing an electronic recording delivery system shall pay for the direct cost of regulation and oversight by the Attorney General and, to pay these costs, authorize the county to impose a fee of up to \$1 for each instrument recorded, impose a fee upon any vendor seeking approval of software and other services as part of an electronic recording delivery system, and impose a fee~~

~~upon any person seeking approval as an authorized submitter of electronic records.~~

~~(3) Existing law requires the Attorney General to appoint an Electronic Recordation Task Force, consisting of specified representatives, to meet on a regular basis to address the technical, legal, security, and economic issues associated with electronic recordation, and recommendations on specified issues.~~

~~This bill would repeal this provision.~~

~~(4) This bill would authorize specified counties, subject to approval of their respective boards of supervisors, to notify by mail the party or parties executing deeds, quitclaim deeds, and deeds of trust, to impose a fee for the cost of the notice, and to require, as a condition of recording, that the document contain specified information. It would require each county providing notification pursuant to these provisions to report to the Legislature on or before June 30, 2007, regarding the discovery of fraudulent deeds, quitclaim deeds, and deeds of trust as a result of the notices.~~

~~(5) This bill would declare that it is to take effect immediately as an urgency statute.~~

Vote: $\frac{2}{3}$. Appropriation: ~~no~~ yes. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1.—Section 27279.4 of the Government Code is~~

2 ~~SECTION 1. (a) It is the intent of the Legislature to enact~~
3 ~~legislation to develop a system to permit the electronic delivery,~~
4 ~~recording, and return of records that are instruments of~~
5 ~~reconveyance, substitutions of trustees, or assignments of deeds of~~
6 ~~trust.~~

7 ~~(b) It is the further intent of the Legislature that electronic~~
8 ~~recording delivery systems be a voluntary county option subject to~~
9 ~~regulation to promote security and uniformity, reduce costs, and~~
10 ~~deter real estate fraud.~~

11 ~~SEC. 2. Article 6 (commencing with Section 27390) is added~~
12 ~~to Chapter 6 of Division 2 of Title 3 of the Government Code, to~~
13 ~~read:~~

14

1 Article 6. *Electronic Recording Delivery Act of 2004*

2
3 27390. (a) *This article shall be known and may be cited as the*
4 *Electronic Recording Delivery Act of 2004.*

5 (b) *For the purposes of this article, the following definitions*
6 *shall apply:*

7 (1) *“Authorized submitter” means a title insurer, an*
8 *underwritten title company, an entity of local, state, or federal*
9 *government, or an institutional lender, as defined in subdivision (j)*
10 *of Section 50003 of the Financial Code, or the agents or employees*
11 *of any of these, who has entered into a contract with a county*
12 *recorder pursuant to subdivision (b) of Section 27391, and*
13 *contracted with a vendor approved by the Attorney General*
14 *pursuant to subdivision (b) of Section 27392.*

15 (2) *“Computer security auditor” means computer security*
16 *personnel hired to perform an independent audit on the electronic*
17 *recording delivery system, approved pursuant to Section 27394*
18 *and not disqualified pursuant to Section 27395. The computer*
19 *security auditor shall be independent of the county recorder and*
20 *the authorized submitter and shall not be the same contractor hired*
21 *to establish or participate in a county’s electronic recording*
22 *delivery system or in the authorized submitter’s portion of that*
23 *system.*

24 (3) *“Digital electronic record” means a record that is created,*
25 *generated, sent, communicated, or stored by electronic means, but*
26 *not created in original paper form.*

27 (4) *“Digitized electronic record” means a scanned image of the*
28 *original paper document.*

29 (5) *“Electronic recording delivery system” means a system*
30 *designed to receive for recording, and to return to the party*
31 *requesting recording, digitized or digital electronic records.*

32 (6) *“Security testing” means an independent security audit by*
33 *a computer security auditor, including, but not limited to, attempts*
34 *to penetrate an electronic recording delivery system for the*
35 *purpose of testing the security of that system.*

36 (7) *“Source code” means a program or set of programs,*
37 *readable and maintainable by humans, translated or interpreted*
38 *into a form that the electronic recording delivery system can*
39 *execute.*

1 (8) “System certification” means the issuance of a
2 confirmation letter regarding an electronic recording delivery
3 system by the Attorney General, as described in Section 27392.

4 27391. (a) Upon approval by resolution of the board of
5 supervisors and system certification by the Attorney General, a
6 county recorder may establish an electronic recording delivery
7 system.

8 (b) (1) Upon system certification, a county recorder may enter
9 into a contract with a title insurer, an underwritten title company,
10 an entity of local, state, or federal government, or an institutional
11 lender, as defined in subdivision (j) of Section 50003 of the
12 Financial Code, to facilitate the delivery for recording, and return
13 to the party requesting recording, of a digital electronic record, or
14 a digitized electronic record, that is an instrument of
15 reconveyance, substitution of trustee, or assignment of a deed of
16 trust.

17 (2) Any party entering into a contract with a county recorder
18 pursuant to paragraph (1) shall contract with a vendor approved
19 by the Attorney General in implementing that contract.

20 (c) If a county recorder elects to utilize an electronic recording
21 delivery system pursuant to this article, he or she may refuse to
22 enter into a contract with any party or may terminate or suspend
23 access to a system if the county recorder deems it necessary to
24 protect the public interest, protect the integrity the of public
25 records, or protect property owners from financial harm. A county
26 recorder may also terminate or suspend access to a system in the
27 event a party commits a substantive breach of the contract or does
28 not comply with this article or the regulations adopted pursuant to
29 this article.

30 (d) A county recorder may require a party electronically
31 submitting records to mail a copy of recorded electronic document
32 to the address specified in the instructions for mailing upon
33 completion of recording.

34 (e) No cause of action or liability against the county recorder
35 or any other government entity shall occur or arise from the
36 decision of the county recorder to refuse to contract with any party
37 or to terminate or deny access of any party to the system.

38 27392. (a) No electronic recording delivery system may
39 become operational without system certification by the Attorney
40 General. The certification shall affirm that the proposed county

1 system conforms to this article and any regulations adopted
2 pursuant to this article, that security testing has confirmed that the
3 system is secure and that the proposed operating procedures are
4 sufficient to assure the continuing security and lawful operation of
5 that system. The certification may include any agreements between
6 the county recorder and the Attorney General as to the operation
7 of the system, including, but not limited to, the nature and
8 frequency of computer security audits. Certification may be
9 withdrawn for good cause.

10 (b) The Attorney General shall approve vendors offering
11 software and other services for electronic recording delivery
12 systems pursuant to regulations adopted as described in
13 paragraph (7) of subdivision (b) of Section 27393.

14 27393. (a) The Attorney General shall, in consultation with
15 the County Recorders Association of California and the California
16 District Attorneys Association, adopt regulations for the review,
17 approval, and oversight of electronic recording delivery systems.
18 Other interested parties may be consulted. Regulations shall be
19 adopted pursuant to the Administrative Procedure Act (Chapter
20 3.5 (commencing with Section 11340) of Part 1 of Division 3). The
21 regulations shall comply with Section 12168.7.

22 (b) The regulations adopted pursuant to subdivision (a) may
23 include, but need not be limited to, all of the following:

24 (1) Establishment of baseline technological and procedural
25 specifications for electronic recording delivery systems.

26 (2) Requirements for security, capacity, reliability, and
27 uniformity.

28 (3) Requirements as to the nature and frequency of computer
29 security audits.

30 (4) A detailed and uniform definition of the term ‘source code’
31 consistent with paragraph (7) of subdivision (b) of Section 27390,
32 and as used in this article, and applicable to each county’s
33 electronic recording delivery system.

34 (5) Requirements for placement of a copy of the operating
35 system, source code, compilers, and all related software
36 associated with each county’s electronic recording delivery system
37 in an approved escrow facility prior to that system’s first use.

38 (6) Requirements for ensuring approval by the Attorney
39 General of substantive modifications to an operating system,
40 compilers, related software, or source code.

1 (7) *Procedures for approval of vendors offering software and*
2 *other services for electronic recording delivery systems.*

3 (8) *Requirements for system certification and for oversight of*
4 *approved systems.*

5 (9) *Requirements for fingerprinting and criminal records*
6 *checks required by Section 27395, including a list of employment*
7 *positions or classifications subject to criminal records checks and*
8 *including a definition of “secure access” as specified in*
9 *subdivision (f) of that section.*

10 (10) *Requirements for uniform index information that shall be*
11 *included in every digitized or digital electronic record.*

12 (11) *Provisions to protect proprietary information accessed*
13 *pursuant to subdivision (e) of Section 27394 from public*
14 *disclosure.*

15 (c) *The Attorney General may promulgate any other*
16 *regulations necessary to fulfill his or her obligations under this*
17 *article.*

18 (d) *An electronic recording delivery system shall be subject to*
19 *local inspection and review by the Attorney General. The Attorney*
20 *General shall furnish a statement of any relevant findings*
21 *associated with a local inspection to the county recorder of a*
22 *county participating in the inspected electronic recording delivery*
23 *system, to the district attorney, and to all technology vendors*
24 *associated with that system.*

25 27394. (a) *To be eligible to establish an electronic recording*
26 *delivery system, a county recorder shall contract with, and obtain*
27 *a report from, a computer security auditor selected from a list of*
28 *computer security auditors approved by the Attorney General.*

29 (b) *The Attorney General shall approve computer security*
30 *auditors on the basis of significant experience in the evaluation*
31 *and analysis of Internet security design, the conduct of security*
32 *testing procedures, and specific experience performing Internet*
33 *penetration studies. The Attorney General shall complete the*
34 *approval of security auditors within 90 days of a request from a*
35 *county recorder. The list shall be a public record.*

36 (c) *An electronic recording delivery system shall be audited, at*
37 *least once during the first year of operation and periodically*
38 *thereafter, as set forth in regulation and in the system certification,*
39 *by a computer security auditor. The computer security auditor*
40 *shall conduct security testing of the electronic recording delivery*

1 system. The reports of the computer security auditor shall include,
2 but not be limited to, all of the following considerations:

3 (1) Safety and security of the system, including the
4 vulnerability of the electronic recording delivery system to fraud
5 or penetration.

6 (2) Results of testing of the system's protections against fraud
7 or intrusion, including security testing and penetration studies.

8 (3) Recommendations as to the need for security testing of an
9 authorized submitter's system, pursuant to subdivision (e).

10 (4) Recommendations for any additional precautions needed to
11 ensure that the system is secure.

12 (d) Upon completion, the reports and any response to any
13 recommendations shall be transmitted to the board of supervisors,
14 the county recorder, the county district attorney, and the Attorney
15 General.

16 (e) (1) A computer security auditor shall have access to any
17 aspect of an electronic recording delivery system, in any form
18 requested. Computer security auditor access shall include, but not
19 be limited to, permission for a thorough examination of source
20 code and the associated approved escrow facility, and necessary
21 authorization and assistance for a penetration study of that system.

22 (2) If it is necessary to extend security testing to any portion of
23 an authorized submitter's system, an authorized submitter may
24 employ, at its own expense, a computer security auditor for this
25 aspect of security testing. The security auditor shall meet all the
26 requirements of this section and shall complete and submit all
27 security testing and reports as required by this article and any
28 regulations adopted pursuant to this article.

29 (f) If the county recorder, a computer security auditor, a district
30 attorney for a county participating in the electronic recording
31 delivery system, or the Attorney General reasonably believes that
32 an electronic recording delivery system is vulnerable to fraud or
33 intrusion, the county recorder, the board of supervisors, the district
34 attorney, and the Attorney General shall be immediately notified.
35 The county recorder shall immediately take the necessary steps to
36 guard against any compromise of the electronic recording delivery
37 system, including, if necessary, the suspension of an authorized
38 submitter or of the electronic recording delivery system.

39 27395. (a) No person shall be a computer security auditor or
40 be granted secure access to an electronic recording delivery system

1 *if he or she has been convicted of a felony, has been convicted of*
2 *a misdemeanor related to theft, fraud, or a crime of moral*
3 *turpitude, or if he or she has pending criminal charges for any of*
4 *these crimes. A plea of guilty or no contest, a verdict resulting in*
5 *conviction, or the forfeiture of bail, shall be a conviction within the*
6 *meaning of this section, irrespective of a subsequent order under*
7 *Section 1203.4 of the Penal Code.*

8 *(b) All persons entrusted with secure access to an electronic*
9 *recording delivery system shall submit fingerprints to the*
10 *Department of Justice for a criminal records check according to*
11 *regulations adopted pursuant to Section 27393.*

12 *(c) Once the Department of Justice has ascertained the*
13 *criminal history information, it shall forward written notification*
14 *of criminal convictions or pending criminal charges, or both, to*
15 *the division of the office of Attorney General charged with*
16 *oversight duties regarding this article. The Attorney General shall*
17 *request subsequent arrest notification service from the Department*
18 *of Justice pursuant to Section 11105.2 of the Penal Code for all*
19 *persons subject to a criminal records check pursuant to this*
20 *section.*

21 *(d) The Attorney General shall deliver written notification of*
22 *an individual's ineligibility for access to an electronic recording*
23 *delivery system to the individual, his or her known employer, the*
24 *computer security auditor, and the county recorder.*

25 *(e) The Department of Justice may charge a fee sufficient to*
26 *cover its costs under this section.*

27 *(f) The Attorney General shall define "secure access" for*
28 *purposes of this section by regulation and by agreement with the*
29 *county recorder in the system certification.*

30 *27396. (a) The Attorney General shall monitor the security*
31 *of electronic recording delivery systems statewide, in close*
32 *cooperation with county recorders and public prosecutors. In the*
33 *event of an emergency involving multiple fraudulent transactions*
34 *linked to one county's use of an electronic recording delivery*
35 *system, the Attorney General may order the suspension of*
36 *electronic recording delivery systems in any county or in multiple*
37 *counties, if necessary to protect the security of the system, for a*
38 *period of up to seven court days. The Attorney General may seek*
39 *an order from the superior court if it is necessary to extend this*
40 *order.*

1 (b) (1) The Attorney General, a district attorney, or a city
2 prosecutor may bring an action in the name of the people of the
3 state seeking declaratory or injunctive relief, restitution for
4 damages or economic loss, rescission, or other equitable relief
5 pertaining to any alleged violation of this article or regulations
6 adopted pursuant to this article. Injunctive relief may include, but
7 is not limited to, an order suspending a party from participation
8 in the electronic recording delivery system, on a temporary or
9 permanent basis.

10 (2) Nothing in this subdivision shall be construed to prevent the
11 Attorney General, a district attorney, or a city prosecutor from
12 seeking legal or equitable relief under any other provision of law.

13 27397. (a) A county establishing an electronic recording
14 delivery system under this article shall pay for the direct cost of
15 regulation and oversight by the Attorney General.

16 (b) The Attorney General may charge a fee directly to a vendor
17 seeking approval of software and other services as part of an
18 electronic recording delivery system. The fee shall not exceed the
19 reasonable costs of approving software or other services for
20 vendors.

21 (c) In order to pay costs under this section, a county may do any
22 of the following:

23 (1) Impose a fee in an amount up to and including one dollar
24 (\$1) for each instrument that is recorded by the county. This fee
25 may, at the county's discretion, be limited to instruments that are
26 recorded pursuant to the electronic recording delivery system.

27 (2) Impose a fee upon any vendor seeking approval of software
28 and other services as part of an electronic recording delivery
29 system.

30 (3) Impose a fee upon any person seeking to contract as an
31 authorized submitter.

32 (d) The total fees assessed by a county recorder pursuant to this
33 section may not exceed the reasonable total costs of the electronic
34 recording delivery system, the review and approval of vendors and
35 potential authorized submitters, security testing as required by this
36 article and the regulations of the Attorney General, and
37 reimbursement to the Attorney General for regulation and
38 oversight of the electronic recording delivery system.

39 (e) Fees paid to the Attorney General pursuant to subdivisions
40 (a) and (b) shall be deposited in the _____ Account, which is hereby

1 *created in the Special Deposit Fund, and, notwithstanding Section*
2 *13340, is continuously appropriated, without regard to fiscal*
3 *years, to the Attorney General for the costs described in those*
4 *subdivisions.*

5 27398. *The Attorney General shall conduct an evaluation of*
6 *electronic recording delivery systems authorized by this article,*
7 *and report to both houses of the Legislature on or before June 30,*
8 *2009.*

9 (a) *The evaluation shall include an analysis of costs, cost*
10 *savings, security and real estate fraud prevention, and*
11 *recommendations as to improvements and possible expansion of*
12 *the provisions of this article.*

13 (b) (1) *It is the intent of the Legislature that the electronic*
14 *delivery, recording, and return of digital and digitized electronic*
15 *records pursuant to this article be limited to an instrument of*
16 *reconveyance, a substitution of trustee, or an assignment of deed*
17 *of trust, because these documents pose less risk of real estate fraud*
18 *loss to property owners and financial institutions than other*
19 *documents affecting the right, title, or interest in real property.*

20 (2) *Therefore, the evaluation conducted under this section shall*
21 *also include a study of the feasibility of expanding the provisions*
22 *of this article to cover the delivery, recording, and return of other*
23 *digital and digitized electronic records.*

24 27399. (a) *The authority granted in this article is in addition*
25 *to any other authority or obligation under state or federal law.*

26 (b) *Nothing in this article shall be construed to repeal or affect*
27 *Section 27279, 27279.1, 27279.2, 27297.6, 27387.1, or 27399.7.*
28 ~~*repealed.*~~

29 ~~SEC. 2. Section 27362 is added to the Government Code, to~~
30 ~~read:~~

31 ~~27362. (a) A county establishing an electronic recording~~
32 ~~delivery system under Article 6 (commencing with Section 27390)~~
33 ~~shall pay for the direct cost of regulation and oversight by the~~
34 ~~Attorney General.~~

35 ~~(b) The Attorney General may charge a fee directly to a vendor~~
36 ~~seeking approval of software and other services as part of an~~
37 ~~electronic recording delivery system. The fee shall not exceed the~~
38 ~~reasonable costs of approving software or other services for~~
39 ~~vendors.~~

~~(c) In order to pay costs under this section, a county may do any of the following:~~

~~(1) Impose a fee of up to one dollar (\$1) for each instrument that is recorded by the county. This fee may, at the county's discretion, be limited to instruments that are recorded pursuant to the electronic recording delivery system.~~

~~(2) Impose a fee upon any vendor seeking approval of software and other services as part of an electronic recording delivery system.~~

~~(3) Impose a fee upon any person seeking approval as an authorized submitter.~~

~~(d) The total fees assessed by a county recorder pursuant to this section may not exceed the reasonable total costs of the electronic recording delivery system, the review and approval of vendors and authorized submitters, security testing as required by this article and the regulations of the Attorney General, and reimbursement to the Attorney General for regulation and oversight of the electronic recording delivery system.~~

~~SEC. 3.— Article 6 (commencing with Section 27390) is added to Chapter 6 of Division 2 of Title 3 of the Government Code, to read:~~

~~Article 6.— Electronic Recording Delivery System Act of 2003~~

~~27390.— (a) This article shall be known and may be cited as the Electronic Recording Delivery System Act of 2003.~~

~~(b) For purposes of this article, the following definitions shall apply:~~

~~(1) “Authorized representative” means either of the following:~~

~~(A) Any employee, contractor, designee, or agent of an authorized submitter to an electronic recording delivery system.~~

~~(B) Any employee, contractor, designee, or agent of a county recorder who is entrusted with access to the electronic recording delivery system.~~

~~(2) “Authorized submitter” means any of the following entities that has qualified pursuant to this article, including Sections 27391 and 27392, and including any regulations adopted pursuant to this article, and that has been approved by, and~~

~~contracted with, a county recorder to electronically record documents:~~

~~(A) An entity, agency, branch, or instrumentality of local, state, or federal government.~~

~~(B) A title insurer or underwritten title company as defined in Section 12340.4 or 12340.5 of the Insurance Code.~~

~~(C) An institutional lender, as defined in subdivision (j) of Section 50003 of the Financial Code.~~

~~(3) "Computer security auditor" means computer security personnel, hired from either the public or private sector, to perform an independent audit or review of the electronic recording delivery system. The computer security auditor shall be independent of the county and shall not be the same contractor hired to establish or participate in that electronic recording delivery system.~~

~~(4) "Digital electronic record" means a record containing information that is created, generated, sent, communicated, received, or stored by electronic means, but not created in original paper form.~~

~~(5) "Digitized electronic record" means a scanned image of the original paper document.~~

~~(6) "Document" means an instrument or record that otherwise meets the requirements of this article and affects the right or title to, interest in, or possession of, real property.~~

~~(7) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.~~

~~(8) "Electronic document" means a document that is created, generated, sent, communicated, or received by electronic means.~~

~~(9) "Electronic recording delivery system" means a system to deliver for recording, and for return to the party requesting recording, digitized electronic records or, pursuant to paragraph (3) of subdivision (a) of Section 27392 or Section 27398, digital electronic records, affecting the right, title, or interest in real property.~~

~~(10) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record.~~

~~(11) "Security testing" means an independent computer security audit, including, but not limited to, the use of computer~~

~~1 security auditors to attempt to penetrate an electronic recording
2 delivery system for the purpose of testing the security of that
3 system. Security testing, including penetration studies, shall be
4 subject to regulation by the Attorney General.~~

~~5 (12) “Source code” means a program or set of programs
6 readable and maintainable by humans, translated or interpreted
7 into a form that the electronic recording delivery system can
8 execute.~~

~~9 (13) “System certification” means issuance of a confirmation
10 letter regarding a specific electronic recording delivery system by
11 the Attorney General. The system certification shall include any
12 agreements between the Attorney General as to the operation of
13 the electronic recording delivery system, including, but not
14 limited to, the frequency of computer security audits.~~

~~15 27391. Any applicant seeking authorization to submit
16 documents under this article shall obtain approval of the county
17 recorder. The county recorder shall have discretion to grant
18 approval based upon the requirements of this article and
19 regulations adopted pursuant to this article. A county recorder may
20 not be held civilly liable for denial of an application pursuant to
21 this section. The recorder shall be guided in the exercise of his or
22 her discretion by the following factors:~~

~~23 (a) Whether accepting electronically delivered records from
24 the person or entity is in the best interest of the county and the
25 public.~~

~~26 (b) Whether the person or entity requesting access to the
27 program for the purpose of electronically delivering documents
28 has effective security precautions in place to safeguard against
29 potential fraud and forgery of documents during the electronic
30 delivery process.~~

~~31 (c) Whether the person or entity requesting access
32 demonstrates the maintenance of sufficient financial ability to
33 indemnify losses for which it is responsible that might be suffered
34 by the county or members of the public.~~

~~35 (d) Whether the volume and quality of electronic records
36 submitted will be sufficient to warrant electronic delivery.~~

~~37 (e) Whether factors of cost, capacity, or security require the
38 limitation of the provision of access to persons requesting to
39 participate, based upon business reasons for recording documents;~~

1 ~~scope of authority under a license, if any, and volume of~~
2 ~~documents recorded in previous years.~~

3 ~~(f) Whether the authorized submitter is legally authorized to~~
4 ~~conduct business in this state.~~

5 ~~27392. (a) (1) Upon approval by resolution of the board of~~
6 ~~supervisors and system certification by the Attorney General, a~~
7 ~~county recorder may establish, in accordance with this article, an~~
8 ~~electronic recording delivery system.~~

9 ~~(2) Except as specified in paragraph (3) and in Section 27398,~~
10 ~~an electronic recording delivery system shall be limited to the~~
11 ~~delivery for recording of documents that are digitized electronic~~
12 ~~records. Authorization for delivery of electronic documents under~~
13 ~~this article may only be granted to an authorized submitter that is~~
14 ~~a title insurer or underwritten title company or an entity, agency,~~
15 ~~branch, or instrumentality of local, state, or federal government.~~

16 ~~(3) An electronic recording delivery system may provide for~~
17 ~~the delivery for recording of a digitized or digital electronic~~
18 ~~record, or both, that is limited to an instrument of reconveyance,~~
19 ~~a substitutions of trustee, or an assignment of a deeds of trust.~~
20 ~~Authorization for delivery of electronic documents under this~~
21 ~~paragraph may be given to any authorized submitter.~~

22 ~~(b) Any system developed pursuant to this article shall provide~~
23 ~~for proper offsite archival procedures in accordance with~~
24 ~~guidelines developed pursuant to Section 12236.~~

25 ~~(c) Any system developed pursuant to this article shall require~~
26 ~~a governing contractual relationship between the recorder and~~
27 ~~each authorized submitter that includes, but need not be limited to,~~
28 ~~the following components:~~

29 ~~(1) A requirement that the submitter comply with this article~~
30 ~~and any implementing regulations.~~

31 ~~(2) Provisions governing the identification and supervision of~~
32 ~~authorized staff.~~

33 ~~(3) Mutually agreed upon standards of operation of the~~
34 ~~electronic recording delivery system.~~

35 ~~(4) Permission by the authorized submitter for security testing.~~

36 ~~(5) A provision specifying that the agreement may be~~
37 ~~terminated pursuant to this article.~~

38 ~~(6) A requirement that all electronic documents originate and~~
39 ~~be submitted from a location within the United States.~~

~~(7) A requirement that the authorized submitter and its authorized representatives consent in writing to the jurisdiction of California courts as to any alleged civil cause of action related to the operation of any electronic recording delivery system. Nothing in this paragraph is intended to affect a contract to submit a dispute to arbitration.~~

~~(d) Notwithstanding Section 27203, a recorder shall refuse to enter an agreement with an authorized submitter, or shall refuse to accept an electronically delivered document from an authorized submitter whenever either of the following occur:~~

~~(1) An authorized submitter or an authorized representative with secure access to an electronic recording delivery system has been convicted of a felony or convicted of a misdemeanor related to theft, fraud, or a crime of moral turpitude. This determination shall be made pursuant to Section 27395. A county recorder may continue to accept electronically delivered documents from an authorized submitter if the authorized submitter documents that it has terminated all access of the authorized representative to the electronic recording delivery system.~~

~~(2) The recorder reasonably believes that the submitter or authorized staff has engaged in improper conduct relating to the recording of documents.~~

~~(e) The county recorder may terminate access to any electronic recording delivery system, or any part of a system, or may terminate access of any authorized submitter, or any authorized representative, at any time he or she deems it necessary to protect the public interest, to protect the integrity of public records, to protect homeowners or real property owners from financial harm, or in the event an authorized submitter or its agents or employees violates any rules or regulations established by the county recorder for maintenance of the system or any provision of the contractual agreement required by this article. No cause of action or liability against the county recorder or any government agency shall arise from the decision of the county recorder to terminate or deny access of any person to the electronic recording delivery system, pursuant to the requirements of this article.~~

~~27393. (a) To be eligible to establish an electronic recording delivery system, a county or county recorder shall contract with, and obtain a report from, a computer security auditor selected from~~

1 a list of computer security auditors approved by the Attorney
2 General.

3 (b) The Attorney General shall approve computer security
4 auditors on the basis of significant experience in the evaluation and
5 analysis of Internet security design, the conduct of security testing
6 procedures, and specific experience performing Internet
7 penetration studies.

8 (c) The Attorney General shall complete the approval of
9 security auditors within 90 days of a request from a county
10 recorder. The list shall be a public record. The computer security
11 auditor shall conduct ongoing monitoring of the electronic
12 recording delivery system and issue periodic reports, with the
13 frequency of monitoring and reporting to be determined by
14 regulation. The reports of the computer security auditor shall
15 include, but not be limited to, all of the following considerations:

16 (1) Safety and security of the proposed system, including the
17 vulnerability of the electronic recordation system to fraud or
18 penetration.

19 (2) Results of testing of the system's protections against fraud
20 or intrusion, including security testing and penetration studies.

21 (3) Recommendations of any additional precautions or
22 provisions needed to ensure that the proposed system is as secure
23 and protects the integrity of the recorder's records.

24 (d) Upon completion, the reports and any response to any
25 recommendations shall be transmitted to the board of supervisors,
26 the county district attorney and the Attorney General. A county
27 may not begin an electronic recording delivery system until
28 security testing, as defined in paragraph (11) of subdivision (b) of
29 Section 27390, has demonstrated that the system is secure and
30 system certification has occurred. The Attorney General shall not
31 approve any electronic recording delivery system, unless it fulfills
32 the requirements of this article and the regulations of the Attorney
33 General.

34 (e) An electronic recording delivery system shall be audited, at
35 least once during the first year of operation and periodically
36 thereafter, as set forth in regulation and in the system certification,
37 by a computer security auditor. The nature and scope of the audit
38 shall conform to this article and regulations adopted pursuant to
39 this article. Audit reports shall be submitted to the Attorney
40 General, the county district attorney, and the county recorder. In

1 conducting the audit, the primary role of the computer security
2 auditor shall be to protect the public interest and ensure that
3 electronic recording delivery systems are reliable and secure.

4 (f) A computer security auditor shall have access to any aspect
5 of an electronic recording delivery system, in any form requested.
6 Auditor access shall include, but not be limited to, permission for
7 a thorough examination of source code and the associated
8 approved escrow facility, and necessary authorization and
9 assistance for a penetration study of that system.

10 (g) If the county recorder, a computer security auditor, a district
11 attorney for a county participating in the electronic recording
12 delivery system, or the Attorney General reasonably believes that
13 an electronic recording delivery system is vulnerable to fraud or
14 intrusion, the county recorder, the board of supervisors, the district
15 attorney, and the Attorney General shall be immediately notified.
16 The county recorder shall immediately take the necessary steps to
17 guard against any compromise of the electronic recording delivery
18 system, including, if necessary, the suspension of the electronic
19 recording delivery system.

20 27394. (a) In lieu of the requirements set forth in Section
21 27321, after acceptance for recording, the county recorder shall
22 electronically transmit a copy of each recorded electronic
23 document accepted under this article to the authorized submitter.
24 The authorized submitter shall be responsible for mailing either by
25 United States Postal Service or electronically a copy of the
26 recorded electronic document to the address specified in the
27 instructions for mailing upon completion of recording.

28 (b) When a signature is required to be accompanied by a
29 notary's seal or stamp, that requirement is satisfied if the electronic
30 signature of the notary contains all of the following:

31 (1) The name of the notary.

32 (2) The words "Notary Public."

33 (3) The name of the county where the bond and oath of office
34 of the notary are filed.

35 (4) The sequential identification number assigned to the notary,
36 if any.

37 (5) The sequential identification number assigned to the
38 manufacturer or vendor of the notary's physical or electronic seal,
39 if any.

~~(c) In addition to, and notwithstanding Section 27361.5, a county recorder, with approval by resolution of the board of supervisors, may require, but need not be limited to, the following index information on the first page or sheet of a digital or digitized electronic document presented for recording:~~

~~(1) The parcel identifier number of the real estate.~~

~~(2) The address of the real estate, to the extent available.~~

~~(3) The name of the authorized submitter presenting the document for recording.~~

~~(4) The name of the authorized requestor of a document for recording.~~

~~(5) The marital, corporate, partnership, or other similar legal status of a person who is a party to the document.~~

~~(6) The date of the document.~~

~~(7) The number of pages or sheets contained in the record, including the first page or sheet.~~

~~(8) The transmittal information to identify the sender and provide recording record information.~~

~~(9) If the document is a grant deed, quitclaim deed, or deed of trust, evidence that the grantor has given informed consent to the use of an electronic document.~~

~~27395. (a) (1) All individuals who are entrusted with access to the electronic recording delivery system as an authorized submitter, authorized representative, or computer security auditor, shall submit two 8" by 8" fingerprint cards bearing the legible rolled and flat impressions of their fingerprints together with a personal description, prepared by a local public law enforcement agency, which shall transmit the card to the Bureau of Criminal Identification and Information in the Department of Justice. Positions subject to this subdivision shall be determined by regulation and shall be set forth in a county's system certification.~~

~~(2) The Attorney General may utilize an alternate system of examining fingerprints if that system meets the same standard of reliability and security set forth in this subdivision and is approved and operated by the Department of Justice.~~

~~(3) The Department of Justice may forward one copy of the applicant's fingerprint cards to the Federal Bureau of Investigation for the purpose of obtaining any record of a previous out-of-state conviction of an applicant.~~

~~(b) The Department of Justice shall ascertain whether an individual applicant who is an authorized submitter, an authorized representative, or a computer security auditor has suffered a felony conviction or a misdemeanor conviction for theft, fraud, or a crime of moral turpitude, including whether the individual applicant has pending criminal charges.~~

~~(c) The Department of Justice shall charge a fee sufficient to cover the cost of processing the fingerprint submission and to cover the cost of the Department of Justice maintaining and storing all applicant records.~~

~~(d) (1) Once the Department of Justice has ascertained the criminal history information of an applicant, it shall forward a written notification of criminal convictions or pending criminal charges, or both, to the division of the office of the Attorney General charged with oversight duties regarding this article.~~

~~(2) The Attorney General shall request subsequent arrest notification service from the Department of Justice pursuant to Section 11105.2 of the Penal Code for all persons subject to a criminal records check pursuant to this section.~~

~~(e) The Attorney General shall deliver written notification of an applicant's ineligibility for access to an electronic recording delivery system to an applicant, his or her known employer, whether it be a public or private employer, to the related authorized submitter, and to the county recorder of the jurisdiction where the applicant seeks access to an electronic recording delivery system.~~

~~(f) No person applying to be, or who has previously been approved as, an authorized submitter, an authorized representative, or a computer security auditor may be employed in the security status of having access to an electronic recording delivery system, if he or she has suffered a felony conviction or misdemeanor conviction for theft, fraud, or a crime of moral turpitude or if he or she has pending criminal charges for any of these crimes, as detailed in the criminal history reviewed by the Department of Justice.~~

~~(g) A plea of guilty or no contest, a verdict resulting in a conviction, or the forfeiture of bail, shall be a conviction within the meaning of this article, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code, allowing the withdrawal of a plea of guilty or no contest, and the entry of a plea~~

1 of not guilty, the setting aside of a verdict of guilty, or the dismissal
2 of accusations, whether by indictment or information.

3 ~~27397. (a) The Attorney General shall, in consultation with~~
4 ~~the County Recorders Association of California and the California~~
5 ~~District Attorneys Association, adopt regulations establishing~~
6 ~~standards for the review and approval of authorized submitters and~~
7 ~~authorized representatives and the review and approval by county~~
8 ~~recorders of systems and processes to conduct electronic recording~~
9 ~~and providing for the regulatory oversight of electronic recording~~
10 ~~delivery systems. Regulations shall be adopted pursuant to the~~
11 ~~Administrative Procedure Act, Chapter 3.5 (commencing with~~
12 ~~Section 11340) of Part 1 of Division 3.~~

13 ~~(b) No electronic recording delivery system may become~~
14 ~~operational without the approval of the Attorney General pursuant~~
15 ~~to applicable regulations adopted pursuant to this article.~~

16 ~~(c) The regulations shall include general guidelines relating to~~
17 ~~security, capacity, reliability, and uniformity, and shall comply~~
18 ~~with Section 12168.7. The regulations shall establish minimum~~
19 ~~standards to ensure that a county recorder has the capability of~~
20 ~~identifying security problems that may make the system~~
21 ~~susceptible to fraud or any attempt to tamper with official records,~~
22 ~~and shall establish specific guidelines, including the approximate~~
23 ~~frequency of security testing, and standards for security and~~
24 ~~security testing.~~

25 ~~(d) The regulations governing security shall require that each~~
26 ~~electronic recording delivery system comply with all requirements~~
27 ~~deemed by the Attorney General to be consistent with the public~~
28 ~~interest in electronic recording delivery systems being as reliable~~
29 ~~and secure as possible.~~

30 ~~(e) The regulations shall also contain all of the following:~~

31 ~~(1) A statement of a uniform definition of the term “source~~
32 ~~code” consistent with this article and applicable to every~~
33 ~~electronic recording delivery system throughout the state.~~

34 ~~(2) The placement of an exact copy of each source code~~
35 ~~associated with each approved electronic recording project in an~~
36 ~~approved escrow facility prior to that system’s first use.~~

37 ~~(3) A requirement that any modification to a source code held~~
38 ~~in escrow that is associated with an approved electronic recording~~
39 ~~delivery system be approved by the Attorney General.~~

~~(4) An expression of standardized policies and procedures for the establishment and operation of approved escrow facilities.~~

~~(5) Establishment of baseline technological and procedural specifications for electronic recording delivery systems.~~

~~(f) Regulations may also provide for initial certification of vendors offering software and other services to counties for electronic recording delivery systems.~~

~~(g) The Attorney General shall monitor the security of electronic recording delivery systems statewide, in close cooperation with county recorders. In the event of an emergency involving multiple fraudulent transactions linked to one county's use of an electronic recording delivery system, the Attorney General may order the suspension of electronic recording delivery systems in any county or in multiple counties, if necessary to protect the security of the system, for a period of up to seven calendar days.~~

~~(h) (1) The Attorney General or a district attorney may bring an action in the name of the people of the State of California seeking declaratory or injunctive relief, restitution, rescission, or other equitable relief pertaining to any alleged violation of this article or regulations adopted pursuant to this article.~~

~~(2) The Attorney General, a district attorney, or a city prosecutor may seek a civil penalty of up to fifty thousand dollars (\$50,000) for each violation of this article or its implementing regulations. In assessing the amount of civil penalty, the court shall consider all relevant circumstances, including, but not limited to, the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the willfulness of the defendant's misconduct, and the defendant's ability to pay.~~

~~(3) Nothing in this subdivision shall be construed to prevent the Attorney General, a district attorney, or a city prosecutor from seeking legal or equitable relief under any other provision of law.~~

~~(i) An electronic recording delivery system shall be subject to local inspection and review by the Attorney General. The Attorney General shall furnish a statement of any relevant findings associated with a local inspection to the county recorder of the inspected electronic recording delivery system, the district attorney, and to all technology vendors associated with that system.~~

1 ~~27397.5.—No right that a party may have to recover damages~~
2 ~~in relation to an electronic recording delivery system may be~~
3 ~~waived or disclaimed in any title insurance policy, escrow~~
4 ~~instruction, or other document pertaining to the real estate~~
5 ~~transaction.~~

6 ~~27398.—(a) Subject to the approval of their respective boards~~
7 ~~of supervisors, the Counties of Alameda, El Dorado, Fresno, Los~~
8 ~~Angeles, Orange, Placer, Riverside, San Bernardino, San Mateo,~~
9 ~~Santa Clara, Tulare, and Ventura may participate in an electronic~~
10 ~~recording pilot project for the delivery and recording of digital~~
11 ~~electronic records. Participation in a pilot project shall be limited~~
12 ~~to an authorized submitter that is a title insurer or underwritten title~~
13 ~~company, or an entity, agency, branch, or instrumentality of local,~~
14 ~~state, or federal government.~~

15 ~~(b) Except as set forth in this section, all of the requirements~~
16 ~~contained in this article shall also apply to an electronic recording~~
17 ~~pilot project implemented under this section.~~

18 ~~(c) The Attorney General may enact any additional regulations~~
19 ~~necessary to ensure the security of a system based upon digital~~
20 ~~electronic records, including regulations related to the acceptance~~
21 ~~of a document containing an electronic signature or digital~~
22 ~~notarization.~~

23 ~~(d) Subject to the requirements of this article, a pilot project~~
24 ~~established under subdivision (a) that is in lawful operation on~~
25 ~~June 30, 2007, may continue in operation until December 31,~~
26 ~~2010.~~

27 ~~(e) This section shall remain in effect only until January 1,~~
28 ~~2011, and as of that date is repealed, unless a later enacted statute,~~
29 ~~that is enacted before January 1, 2011, deletes or extends that date.~~

30 ~~27398.5.—(a) Subject to approval of their respective boards of~~
31 ~~supervisors, the Counties of Alameda, Contra Costa, El Dorado,~~
32 ~~Fresno, Orange, Placer, Riverside, San Bernardino, San Mateo,~~
33 ~~Santa Clara, Tulare, and Ventura may, within 30 days of~~
34 ~~recording of a deed, quitclaim deed, or deed of trust, notify by~~
35 ~~mail the party or parties executing the document. The recorder~~
36 ~~may require, as a condition of recording, that a deed, quitclaim~~
37 ~~deed, or deed of trust indicate the assessor's identification number~~
38 ~~or numbers that fully contain all, or a portion of, the real property~~
39 ~~described in the legal description. If the description contains more~~

~~than one assessor's parcel, all assessor's parcels shall be indicated.~~
~~The form of the entry shall be substantially as follows:~~

~~Assessor's Identification Number — — —.~~

~~(b) This section shall not apply to the recordation of any document where the federal government, or state, county, city, or any subdivision of the state acquires title.~~

~~(c) The failure of the county recorder to provide the notice as permitted by this section shall not result in any liability against the recorder or the county.~~

~~(d) In addition to any other recording fee, the recorder may collect a fee from the party filing a deed, quitclaim deed, or deed of trust, other than a government entity, pursuant to subdivision (a). The fee shall not exceed the cost of the notice, or four dollars (\$4), whichever is less.~~

~~(e) On or before June 30, 2007, each county providing notification pursuant to subdivision (a) shall report to the Legislature regarding the discovery of fraudulent deeds, quitclaim deeds, and deeds of trust as a result of the notices.~~

~~27399. Nothing in this article shall be construed to authorize any public agency to intrude upon the autonomy or business practices of the county recorders of the State of California in any manner not specifically set forth in this article.~~

~~27399.5. The authority granted in this article is in addition to any other authority or obligation under California or federal law. Nothing in this article shall be construed to repeal or affect Section 27279, 27279.1, 27279.2, 27279.3, 27297.6, or 27387.1.~~

~~27399.7. The Attorney General shall conduct an evaluation of electronic recording delivery systems authorized by this article, including the pilot projects authorized pursuant to Section 27398, and report to both houses of the Legislature on or before June 30, 2007. The Legislature may, based on this evaluation, consider whether the pilot projects should be expanded or extended, or limited or terminated, and whether any amendments to this article are warranted.~~

~~SEC. 4.—~~

~~SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:~~

1 In order that county recorders may alleviate fiscal constraints by
2 implementing electronic recording delivery systems at the earliest
3 possible time, it is necessary for this act to take effect immediately.

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